

1 DAVID W. SHAPIRO (NYSBN 2054054)
United States Attorney

2 J. DOUGLAS WILSON (PASBN 44915)
3 Chief, Criminal Division

4 EMILY J. KINGSTON (CSBN 185752)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
7 Telephone: (415) 436-7000

8 Attorney for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DAVID GAINER AND SANDRA
MASCARENHAS,

16 Defendants.

Criminal No. CR-01-0129-MMC

PLEA AGREEMENT

17 I, David Gainer, and the United States Attorneys's Office for the Northern District of
18 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
19 pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure:

20 The Defendant's Promises

21 1. I agree to plead guilty to Counts One, Two and Three of the captioned indictment
22 charging me with willfully making and subscribing false federal income tax returns for tax years
23 1994, 1995 and 1996, in violation of 26 U.S.C. § 7206(1). I agree that the elements of the
24 offenses are as follows:

25 a. The defendant made and signed a tax return that contained false
26 information as to a material matter;

27 b. The defendant knew that this information was false;
28

PLEA AGREEMENT
CR-01-0129 MMC

FILED

MAY 1 2002

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

1 c. The return contained a written declaration that it was being signed subject
2 to penalties of perjury; and

3 d. The defendant acted willfully.

4 I agree that the maximum penalties for these offenses are as follows:

- | | | | |
|---|----|----------------------------------|------------------------------|
| 5 | a. | Maximum prison sentence: | 3 years |
| 6 | b. | Maximum fine: | \$250,000 |
| 7 | c. | Maximum supervised release term: | 1 year |
| 8 | d. | Mandatory special assessment: | \$50 (tax year 1994) |
| 9 | | | \$100 (tax years 1995, 1996) |

10 2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that
11 the following facts are true:

12 During the years 1994, 1995 and 1996, I and Sandra Mascarenhas operated two
13 telemarketing fund raising businesses, June-Berry, Inc. and Fi-Pol, Inc. I entered into contracts
14 with various charities pursuant to which we agreed to raise funds for the charities using our
15 telemarketing businesses. During these years, I and Sandra Mascarenhas received income from
16 the operation of our telemarketing fund raising businesses.

17 For taxable years 1994, 1995 and 1996, I and Sandra Mascarenhas caused to be prepared,
18 through our tax return preparers, and filed with the Internal Revenue Service, joint U.S.
19 Individual Income Tax Returns for such years. We did not report some of the income we
20 received through our operation of the telemarketing fund raising businesses on these returns.

21 On or about April 15, 1995, I and Sandra Mascarenhas willfully made and subscribed a
22 joint U.S. Individual Income Tax Return for tax year 1994, which was verified by a written
23 declaration that it was made under the penalties of perjury, and which was filed with the Internal
24 Revenue Service. On this tax return, we reported adjusted gross income of <\$1,973.00>, and
25 taxable income of \$0.00, when we then and there well knew and believed, that our correct
26 taxable income was in excess of \$0.00. We knew that this tax return was not true and correct as
27 to every material matter. In making and subscribing such false return, we acted wilfully.

28 On or about April 17, 1998, I and Sandra Mascarenhas willfully made and subscribed a

1 joint U.S. Individual Income Tax Return for tax year 1995, which was verified by a written
2 declaration that it was made under the penalties of perjury, and which was filed with the Internal
3 Revenue Service. On this tax return, we reported adjusted gross income of <\$35,546.00>, and
4 taxable income of \$0.00, when we then and there well knew and believed, that our correct
5 taxable income was in excess of \$0.00. We knew that this tax return was not true and correct as
6 to every material matter. In making and subscribing such false return, we acted wilfully.

7 On or about February 28, 1998, I and Sandra Mascarenhas willfully made and subscribed
8 a joint U.S. Individual Income Tax Return for tax year 1996, which was verified by a written
9 declaration that it was made under the penalties of perjury, and which was filed with the Internal
10 Revenue Service. On this tax return, we reported adjusted gross income of \$139,228.00, and
11 taxable income of \$20,128.00, when we then and there well knew and believed, that our correct
12 adjusted gross income was in excess of \$139,228.00, and our correct taxable income was in
13 excess of \$20,128.00. We knew that this tax return was not true and correct as to every material
14 matter. In making and subscribing such false return, we acted wilfully.

15 3. I agree to give up all rights that I would have if I chose to proceed to trial,
16 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
17 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
18 any other Fourth or Fifth Amendment claims; to any further discovery from the government as
19 may be limited by United States v. Ruiz, 241 F.3d 1157 (9th Cir. 2001); and to pursue any
20 affirmative defenses and present evidence.

21 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
22 the Court. I also agree to waive any right I may have to appeal my sentence, unless the sentence
23 is not in conformance with this Agreement.

24 5. I agree not to file any collateral attack on my conviction or sentence, including a
25 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
26 that my constitutional rights to the effective assistance of counsel was violated.

27 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
28 entered, unless the Court declines to accept the sentence agreed to by the parties as stated in

1 paragraph 9, below. I agree that the government may withdraw from this Agreement if the Court
2 does not accept the agreed upon sentence set out below.

3 7. I agree that the Sentencing Guidelines should be calculated under U.S.S.G. §§
4 2T1.1 and 2T4.1, and that the total tax loss for purposes of 26 U.S.C. § 7206(1) is \$230,340.00.
5 I further agree that the Sentencing Guidelines should be calculated as follows, and that I will not
6 ask for any other adjustments to or reductions of the offense level:

7	a.	Base Offense Level:	=	16
8	b.	Acceptance of Responsibility:	=	- 3
9	c.	Adjusted offense level:	=	13

10 8. I understand that under the offense level of 13, with a Criminal History Category
11 2, the Court may sentence me to a period of imprisonment of between 15 and 21 months; impose
12 1 year of supervised release (with conditions to be fixed by the Court); impose a \$250,000 fine;
13 and impose a \$50 special assessment as to Count One and a \$100 special assessment as to Counts
14 Two and Three to which I am pleading guilty.

15 9. I agree that an appropriate disposition of this case is as follows: A 15 month
16 sentence of imprisonment (U.S.S.G. § 5C1.1(f)); one year supervised release (18 U.S.C. §
17 3559(a)(4), U.S.S.G. § 5D1.1 and 5D1.2(b)(2)) (with conditions to be fixed by the Court); a
18 \$3,000 fine (U.S.S.G. § 5E1.2(c)(3)); and a \$50 special assessment as to Count One and a \$100
19 special assessment as to Counts Two and Three (U.S.S.G. § 5E1.3).

20 10. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution
21 I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the
22 government, or the U.S. Probation Office, provide accurate and complete financial information,
23 submit sworn statements and give depositions under oath concerning my assets and my ability to
24 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
25 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessments at
26 the time of sentencing. I agree to comply and cooperate with the Internal Revenue Service in a
27 good-faith effort to determine the accurate amount of, and pay any, outstanding tax liabilities,
28 including any penalties and interest, for which I may be liable. I agree that this agreement does

1 not bar the Internal Revenue Service from making a civil determination with respect to additional
2 taxes, interest and penalties for which I may be liable, nor will it bar me from civilly contesting
3 any such liabilities as determined by the Internal Revenue Service.

4 11. I agree that during the periods of my incarceration and supervised release I will
5 not participate in or operate any charity fund raising activities or businesses, nor will I participate
6 in or operate any telemarketing activities or businesses, whether such activities or businesses are
7 for charitable fundraising or otherwise.

8 12. I agree not to commit or attempt to commit any crimes before sentence is imposed
9 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
10 release (if any); intentionally provide false information to the Court, the Probation Office,
11 Pretrial Services, or the government; or fail to comply with any of the other promises I have
12 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
13 Agreement, then the government will be released from all of its promises below, but I will not be
14 released from my guilty plea.

15 13. I agree that this Agreement contains all of the promises and agreements between
16 the government and me, and I will not claim otherwise in the future.

17 14. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
18 District of California only, and does not bind any other federal, state, or local agency.

19 The Government's Promises

20 15. The government agrees not to file or seek any additional charges against the
21 defendant that could be filed as a result of the investigation that led to the captioned indictment.

22 16. The government agrees that the appropriate sentence in this case should be as set
23 forth in paragraph 9, above, unless the defendant violates the agreements as set forth in
24 paragraphs 10, 11, and 12, above.

25 Defendant's Affirmations

26 17. I confirm that I have had adequate time to discuss this case, the evidence, and this
27 Agreement with my attorney, and that she has provided me with all the legal advice that I
28 requested.

1 18. I confirm that while I considered signing this Agreement, and at the time I signed
2 it, I was not under the influence of any alcohol, drug, or medicine that impaired my ability to
3 understand this Agreement, its terms, and the rights I am giving up by pleading guilty and signing
4 this Agreement.

5 19. I confirm that my decision to enter a guilty plea is made knowing the charges that
6 have been brought against me, any possible defenses, and the benefits and possible detriments of
7 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
8 one coerced or threatened me to enter into this Agreement.

9
10 Dated: MAY 1 2002


DAVID GAINER
Defendant


12 DAVID W. SHAPIRO
United States Attorney

13 Dated: 5/1/02


EMILY J. KINGSTON
Assistant United States Attorney

15 I have fully explained to my client all the rights that a criminal defendant has and all the
16 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
17 and all the rights he is giving up by pleading guilty, and, based on the information now known to
18 me, his decision to plead guilty is knowing and voluntary.

19
20 Dated: 5/1/02


ALEXANDRA MCCLURE
Assistant Federal Public Defender
Attorney for Defendant